IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 1543 of 2002

Reserved on : 20.6.2007

Date of Decision : July 17th, 2007

Kuldeep Singh …Petitioner.

Versus:

State of H. P. & Others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For petitioner 1(a) : Mr. N. K. Thakur, Advocate.

For respondents 1 to 3.: Mr. J. K. Verma, Deputy Advocate General.

For respondent No.4 : Mr. Ajay Sharma, Advocate

Sanjay Karol, J.

The present writ petition has been filed with the following reliefs:-

"It is, therefore, respectfully prayed that the present writ petition may very kindly be allowed/accepted and the impugned order Annexure P-7 passed by respondent No.2 may very kindly be quashed and set aside thereby directing the respondents with an appropriate writ, order or direction to implement the order dated 4.4.1977. Or any other or further order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may also

be passed in favour of the petitioner and justice be done to the petitioner."

Annexure P-7 is the order dated 29.5.2002 passed by the Financial Commissioner (Appeals) in Revenue Revision No. 149/91, titled as Joginder Singh vs. Kashmiri Devi and others, whereby the order dated 4.4.1977 passed by the Collector under the Land Ceiling Act, has been set aside.

In order to give effect to the policy of the State securing the principles specified in Article 39(b) & (c) of the Constitution of India, the State of Himachal Pradesh enacted The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter referred to as 'the Act'). In terms of the said Act, no person could hold land within the State of Himachal Pradesh exceeding the permissible area on or from the appointed date. Section 8 entitles the land owner to select and chose the land which he desires to retain in excess of the permissible area and a declaration by way of return is required to be filed in terms of Section 9 and in the absence of such a selection and declaration and filing of return, it is open for the Collector to pass an order selecting the permissible area of such person. A draft statement specifying the parcel of land selecting the area to be retained is required to be prepared and published and after hearing the objector, if any, final order is required to be passed by the Collector in terms of Section 10 of the Act. The excess land so determined after the possession is taken and payment of

compensation made, stands vested in the State Government free from all encumbrances.

For the sake of ready reference, the provisions of Sections 9, 10 & 11, are reproduced hereinbelow :-

> "***9. Declaration supported by affidavits to be furnished by certain landowners and tenants:-*** (1) Every person required to furnish a return under Section 8 whose land is situated in more than one patwar circle shall furnish to the Collector within a prescribed period a declaration supported by an affidavit in respect of the land owned or held by him in such form and manner as may be prescribed.
>
> (2) *If a person fails to select the permissible area in accordance with the provision of Section 8, the Collector may after collecting the information in such manner as he may deem fit, by order select the permissible area of such person.*
>
> Provided that no such order shall be made without giving the person concerned an opportunity of being heard.
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> ***10. Submission of statement to Collector:-*** (1) On the basis of the information given in the return under Section 8 or the declaration furnished under sub-section (1) of Section 9 which shall be duly verified through such agency as may be prescribed or the *information obtained by the Collector under sub-section (2) of Section 9, the Collector shall prepare a draft statement in the manner prescribed showing among other particulars the total area of land owned or held by such a person the specific parcels of land which a person may retain by way of permissible area or exemption from ceiling and also the surplus area.*

(2) The draft statement shall be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. *Any objection received within 30 days of the service shall be duly considered by the Collector* and after affording the objectors an opportunity of being heard, the Collector shall pass such order as he may deem fit.

(3) *A draft statement shall be made final in terms of the order of the Collector or the order, if any, passed in appeal, revision or review, as the case may be*.

11. Vesting of surplus area in the State Government :- The *surplus area* of a person shall, *on the date on which possession thereof is taken by or on behalf of the State Government be deemed to have been acquired by the State Government for a public purpose on payment of amount hereafter provided* and all rights, title, interests (including the contingent interest, if any) recognized by any law, custom or usage for the time being in force, of all persons in such area shall stand extinguished and such rights, title and interests shall vest in the State Government free from any encumbrance.

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it."

In the present case, after commencement of the Act, admittedly the petitioner did not exercise his option and file his statement as envisaged under Section 8 of the Act. Consequently, the Collector having left with no option, proceeded under Section 9 (2) and passed an order dated 13.12.1974 (not

on record), selecting the land as required under the Act. Report in Form C-V was prepared on 12.6.1974. Thereafter, petitioner was served with the notice dated 25.3.1975 directing him to either hand over the possession of the surplus land or file objections to the same. In terms of the said notice, the petitioner's land declared surplus was as under:-

"Surplus Land

Khewat No.	Share	Area
51	1/6	1-16
240	1/9	7-3
255	1/9	0-2
275	1/36	0-19
		10-0

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The share of the petitioner declared surplus was also recorded and reflected in the revenue record on 8.8.1975 and the entire land of the petitioner is stated to be partitioned on 13.6.1976.

On 16.11.1976 petitioner moved an application, inter alia praying that he had spent huge amount of money for arranging irrigation facility in Khasra No. 1032 to 1036 where he has set up a tube-well, had his courtyard in Khasra Nos. 999, 991 and 997 and Khasra Nos. 1000 and 1005 was used for passage of cattle. Therefore, the said land be allowed to be retained by him and other land, in equal share, in lieu thereof be taken to avoid any loss and hardship to him.

On the petitioner's application dated 1.11.1974, the Collector, Una passed the following order dated 21.1.1977:-

> "*I have inspected the spot.* The objection of the owner is that Khasra Nos.1035/1, 1032 and 1005/1 have been partitioned in favour of the Govt. whereas in the order of the Collector and the learned Financial Commissioner 1/6 share of khasra No. 4, 1/9 share of khasra No. 25, 1/9 share of khasra No. 2 and 1/36 share of khasra No. 26 have been declared as surplus and that he should have been given an opportunity to be heard. *From the spot inspection, it is clear that khasra Nos. 1005/1 and 1032 are close to the abadi of the petitioner and khasra No. 1036/1 has been made irrigated by the petitioner by sinking a tube well in khasra No. 925 as shown in the attach map.* From the perusal of the file, it appears that the partition of land has been done in the absence of the petitioner without hearing him. I, therefore, allow him to be heard. The case to come up for hearing on 21.2.1977."
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> (Emphasis supplied)

On 4.7.1977, petitioner's following statement made in the presence of Patwari was recorded :-

> "Stated that I have no objection of land comprising khasra No. 3527/2 measuring 0-17, 964/2, measuring 0-9, 225, measuring 0-2, but instead of land comprising khasra Nos. 1032, 1036/1, 964/2, measuring 7-3, 1005/1, 1000, measuring 1-0, khasra Nos. 964/2, 1057/1, 1347, 1408, 3835/248 measuring 7-2 and 1345 measuring 0-19 be taken."

Petitioner's statement was accepted and effected as such by the Collector and the Patwari was directed to implement the same in the revenue record. The Collector accordingly also passed an order dated 27.7.1977, whereby the total land of the petitioner was partitioned as under:-

"Total area and details of khasra numbers declared as surplus in favour of Govt.

Total area and details of khasra numbers declared as surplus in favour of Govt. after amendment.

Name of Mauza with H.B. No.	No. Khewat	No. Khasra	Area	Khewat	No. Khasra	Total Area
Nangal Khurd 471	51	3527/2	0-17	51	3527/2	0-17
	240	1032/	2-10	240	964/2	0-9
		1036/1	4-4		1057/1	0-18
		964/2	0-9		1347	1-1
					1408	0-4
					3835/248	3-10
		Kita 3	7-3		Kita 5	7-2
	255	225	0-2			
	275	1005/1	0-15	255	225	0-2
		1000	0-5	275	1345	0-19
		Kita 7	9-2		Kita 8	9-0

Possession of the land in terms of the aforesaid orders was also handed over by the petitioner. The said orders, however, were not implemented in the revenue record. Therefore, petitioner moved an application for implementation of the said order and vide orders dated 24.2.1990, petitioner's application was allowed and the Deputy Commissioner, Una directed that the

order dated 4.4.1977 be duly implemented in the revenue record and the petitioner be shown as owner of the land in question. This order was however taken in revision by the objector before the Financial Commissioner (Appeals) in Revenue Revision No. 149/91, titled s Joginder Singh vs. Kashmiri Devi and others, and the order dated 4.4.1977 was set aside on the ground that in the absence of any power of review, the original order dated 31.12.1974 passed under the Act could not have been reviewed by the Collector thus rendering all subsequent orders without jurisdiction.

Learned counsel for the petitioner has argued that the petitioner is in possession of the land in question and has handed over the possession of the land declared surplus and permitted in terms of order dated 27.7.1977. According to him, the proceedings have not attained finality in terms of order dated 13.12.1974 as has been held by the Financial Commissioner which is evident from the notice dated 23.3.1975. According to him, there is a tube well and a super structure on the land which he wanted to retain and petitioner would suffer irreparable loss and injury if land comprising in khasra Nos. 1032, 1036/1 and 1005/1 is not allowed to be retained by him and on the contrary, the State cannot be said to be prejudiced in any manner as land equated to the share declared surplus has been taken by the Government.

Learned counsel for the State has placed on record the summoned record and based thereupon has argued that the proceedings contemplated under the Act had attained finality in

terms of order dated 13.12.1974 and that said order was assailed in appeal and was upheld vide orders dated 13th December, 1975 passed by the Divisional Commissioner in Ceiling Appeal No. 246 of 1975 titled as Joginder Singh vs. State of H. P. Learned counsel for respondent No.4 has vehemently opposed the petition.

Before I deal with the merits of the case, I must point out as to how the matter reached the Financial commissioner. Respondent No.4 Ranbir Singh, as has been found out from the record, has got no interest or right whatsoever in the land of the petitioner, which has either been allowed to be retained or declared surplus. He apparently has been pursuing the matter by way of public interest or for other reasons not borne out from the record. The said respondent apparently had an objection that petitioner was wrongly shown as tenant over the land, which was declared surplus. Accordingly, on Ranbir Singh's representation the revenue entries were rectified. This fact is recorded by the Collector in his order dated 24.2.1990 as under:-

> Subsequently, Shri Ranbir Singh, s/o Sadu Singh of village Nangal Khurd submitted a representation dated 31.7.1984 alleging therein inter alia that the aforesaid entries of tenancy over the land in question have been wrongly managed by Shri Joginder Singh land owner so as to grab the land which had, according to him, once vested in the Government. After conducting inquiry into the said application, my predecessor passed the following order on 25.6.1985:-

> "The Tehsildar should be asked to change the entries. This is just correction of mistake made unintentionally."

Whether the Sub Divisional Collector, Una, on the asking of a person, who had no right, title and interest in the land, could have made a reference for implementation of the orders passed by the Collector, was an issue, which was required to be considered by the Financial Commissioner before passing the impugned order. Be that as it may be, it is important to point out that the State Government of its own was not at all aggrieved by the order dated 24.2.1990 seeking implementation of the order dated 27.7.1977, which also was not assailed by the State at any point in time. It is clear that respondent No.4 has got no interest except that he wanted to bring to the notice of the authorities, purported illegality which was being perpetuated either on the part of the petitioner or on the officials of the State.

Importantly, the Act does not envisage any automatic vestment of surplus area in the State Government. It is only when the compensation is paid and the possession is taken by the State Government that the land would be deemed to be acquired and vest in the State Government. The purpose of the Act is to put a ceiling on the total land holdings of the owner. The Act itself gives the land owner the right and flexibility to choose, decide and retain the land. Even if the person has not exercised his right of choice, the Act still entitles him to file objections and challenge the draft statement proposing the land sought to be acquired in

excess of the permissible area. Perusal of the show cause notice dated 23.3.1975 itself would show that the proceedings had not attained finality as is sought to be argued by the State on the strength of the order dated 13.12.1974. Had it been so, then no show cause would have been given to the petitioner. Secondly, perusal of the said order itself shows that it did not mention the khasra number in question. It mentioned the kitta number but not the khasra number, even the draft statement did not specify the khasra number required to be declared surplus. Only the share in the land falling in the kitta number was given. This, however, may not be a deciding factor but however, the possession of the land was not taken at all. There were more entries on papers**.** Petitioner promptly moved the application which on spot verification was found to be just and equitable and action taken accordingly. Therefore, it cannot be said that the proceedings contemplated under the Act had attained finality as no vestment had taken place in the present case.

The Collector after having personally inspected the site in terms of order dated 21.1.1977 held that khasra Nos. 1005/1 and 1032 are close to the abadi of the petitioner and khasra No. 1036/1 has been irrigated by the petitioner by sinking a tube well in khasra No. 925. Keeping in view the ground reality, he directed that the land to be partitioned as was sought by the petitioner. He recorded that partition of the land had taken place in the absence of the petitioner. Accordingly, he accepted the partition based on the statement of Joginder Singh.

While passing the order dated 24.2.1990, the Collector recorded that the petitioner has already surrendered land of equivalent area in favour of the Government in lieu of the land directed to be retained by him in terms of the order dated 4.4.1977 and, therefore, the order dated 4.4.1977 requires to be duly implemented in the revenue record. Incidentally, this aspect of the matter was not considered at all by the Financial Commissioner while passing the impugned order. The order dated 13.12.1974 was never in question at the time of passing of the orders dated 21.1.1977 or 27.7.1977. Since the order dated 31.12.1974 only mentions the share in land to be surplus, therefore, it was absolutely open for the Collector to have subsequently passed an order balancing the equities and conveniences of the parties.

Apart from the aforesaid legal position, in my view, the equity definitely weighs in favour of the petitioner. The land has tube well and is adjoining to his other land. He is in possession since 1977. The State has got land equivalent to the share declared to be surplus, therefore, he should be allowed to retain the same.

The petitioner is in no manner assailing the order dated 13.12.1974, whereby his entire land has been included but his challenge is restricted to the order dated 29.5.2002, whereby the Financial Commissioner has set aside the orders dated 4.4.1977 and 24.2.1990 passed by the Collector. He does not dispute the share and the total area which was required to be

given to the State but the grievance is that since the draft statement and the order dated 13.12.1974 only mentioned the share in the kitta number and did not specify the khasra number which required to be given to the Government and possession thereof not taken, therefore, he was well within his right to move an application seeking partition of the land as required and found convenient at site.

Perusal of the order passed by the Divisional Commissioner in Ceiling Appeal No. 246 of 1975 would show that the petitioner had assailed the order on the ground that the petitioner's Gair Mumkin land which was not subservient to agriculture was also included in the total holdings of the appellant, therefore, he was aggrieved of the same. Therefore, the said order in no manner could have had any bearing on the subsequent orders.

The petitioner has not challenged the area which is declared surplus area and is required to be vested with the Government. In fact, he has surrendered the possession of the area in excess as has been duly recorded in the order dated 24.2.1990 passed by the Collector.

For the aforesaid reasons, in exercise of writ jurisdiction, I deem it fit and proper to set aside the order dated 29.5.2002 passed by the Financial Commissioner (Appeals) and the orders dated 21.1.1977 and 27.7.1977 passed by the Collector be implemented immediately.

In my view, no prejudice would be caused to the State whereas serious irreparable loss and prejudice would be caused to the petitioner if it is not directed so.

The respondents are directed to implement the orders dated 4.4.1977 and 27.7.1977 passed by the Collector in case No. 139/74 titled as Joginder Singh vs. Collector. The writ petition is accordingly allowed.

(Sanjay Karol),
Judge.

July 17th, 2007.
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